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No. 93-9

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1992

WASHINGTON SUBURBAN SANITARY COMMISSION,
Petitioner,

v.

CAE-LINK CORPORATION, *et al.*,
Respondents.

Petition for Writ of Certiorari to the Court of Appeals of Maryland

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PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Do emergency injunctive orders issued by a United States District Court under the Emergency Powers section of the Water Pollution Control Act, 33 U.S.C. § 1364, which require Petitioner to build and operate a sludge composting facility at a specified location, preempt state law to the extent that state law subjects Petitioner to strict liabiilty for carrying out those emergency injunctive orders in good faith and without negligence?

2. Does the citizen suit provision of the Water Pollution Control Act, 33 U.S.C. § 1365, broadly preserve state common law actions so as to preclude preemption of state law by other provisions of the Water Pollution Control Act, or do emergency federal court orders issued under the Emergency Powers section of the Act, 33 U.S.C. § 1364, preempt conflicting state law, as indicated by this Court in *International Paper Co. v. Ouellette*, 479 U.S. 481 (1987)?

LIST OF THE PARTIES

1. Petitioner is the Washington Suburban Sanitary Commission, a Bi-County agency of the State of Maryland.

2. Respondents are CAE-Link Corporation, AT&T Resource Management Corporation, International Fabricare Institute, Erie Indemnity Company, and the Washington Post Company.

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PETITION FOR WRIT OF CERTIORARI

Petitioner, Washington Suburban Sanitary Commission, respectfully requests that this Court grant this Petition for Writ of Certiorari.

OPINIONS BELOW

1. *Washington Suburban Sanitary Comm'n v. CAE-Link Corp.*, 330 Md. 115, 622 A.2d 745 (1993). App. A, 1a-36a.

2. *CAE-Link Corp. v. Washington Suburban Sanitary Comm'n*, 90 Md. App. 604, 602 A.2d 239 (1992). App. B, 37a-59a.

3. Order of the Circuit Court for Montgomery County, Maryland dated July 31, 1990. App. C, 60a.

STATEMENT OF JURISDICTION

The judgment of the Court of Appeals of Maryland was entered on April 8, 1993. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED IN THE CASE

1. Constitution of the United States Art. VI, cl. 2:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

2. Federal Water Pollution Control Act, 33 U.S.C. § 1364(a):

> § 1364. Emergency powers
>
> (a) Emergency powers
>
> Notwithstanding any other provision of this chapter, the Administrator upon receipt of evidence that a pollution source or combination of sources is presenting an imminent and substantial endangerment to the health of persons or to the welfare of persons where such endangerment is the livelihood of such persons such as inability to market shellfish, may bring suit on behalf of the United States in the appropriate district court to immediately restrain any person causing or contributing to the alleged pollution to stop the discharge of pollutants causing or contributing to such pollution or to take such other action as may be necessary.

3. Federal Water Pollution Control Act, 33 U.S.C. § 1365:

§ 1365. Citizen suits

(a) Authorization, jurisdiction

Except as provided in subsection (b) of this section and Section 1319(g)(6) of this title, any citizen may commence a civil action on his own behalf—

(1) against any person (including (i) the United States, and (ii) any other governmental instrumentality or agency to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of (A) an effluent standard or limitation under this chapter or (B) an order issued by the Administrator or a State with respect to such standard or limitation, or

(2) against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this chapter which is not discretionary with the Adminstrator.

The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such an effluent standard or limitation, or such an order, or to order the Administrator to perform such act or duty, as the case may be, and to apply any appropriate civil penalties under section 1319(d) of this title.

(b) Notice

No action may be commenced—

(1) under subsection (a)(1) of this section—

(A) prior to sixty days after the plaintiff has given notice of the alleged violation (i) to the Administrator, (ii) to the State in which the alleged violation occurs, and (iii) to any alleged violator of the standard, limitation, or order, or

(B) if the Administrator or state has commenced and is diligently prosecuting a civil or criminal action in a court of the United States, or a State to require compliance with the stand-

ard, limitation, or order, but in any such action in a court of the United States any citizen may intervene as a matter of right.

(2) under subsection (a)(2) of this section prior to sixty days after the plaintiff has given notice of such action to the Administrator,

except that such action may be brought immediately after such notification in the case of an action under this section respecting a violation of sections 1316 and 1317(a) of this title. Notice under this subsection shall be given in such manner as the Administrator shall prescribe by regulation.

(c) Venue; intervention by Administrator; United States interests protected

(1) Any action respecting a violation by a discharge source of an effluent standard or limitation or an order respecting such standard or limitation may be brought under this section only in the judicial district in which such source is located.

(2) In such action under this section, the Administrator, if not a party, may intervene as a matter of right.

(3) Protection of interests of United States

Whenever any action is brought under this section in a court of the United States, the plaintiff shall serve a copy of the complaint on the Attorney General and the Administrator. No consent judgment shall be entered in an action in which the United States is not a party prior to 45 days following the receipt of a copy of the proposed consent judgment by the Attorney General and the Administrator.

(d) Litigation costs

The court, in issuing any final order in any action brought pursuant to this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any prevailing or substantially pre-

vailing party, whenever the court determines such award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

(e) Statutory or common law rights not restricted

Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any effluent standard or limitation or to seek any other relief (including relief against the Administrator or a State agency).

(f) Effluent standard or limitation

For purposes of this section, the term "effluent standard or limitation under this chapter" means (1) effective July 1, 1973, an unlawful act under subsection (a) of section 1311 of this title; (2) an effluent limitation or other limitation under section 1311 or 1312 of this title; (3) standard of performance under section 1316 of this title; (4) prohibition, effluent standard or pretreatment standards under section 1317 of this title; (5) certification under section 1341 of this title; or (6) a permit or condition thereof issued under section 1342 of this title, which is in effect under this chapter (including a requirement applicable by reason of section 1323 of this title); or (7) a regulation under section 1345 (d) of this title.

(g) Citizen

For the purposes of this section the term "citizen" means a person or persons having an interest which is or may be adversely affected.

(h) Civil action by State Governors

A Governor of a State may commence a civil action under subsection (a) of this section without regard to the limitations of subsection (b) of this section, against the Administrator where there is

> alleged a failure of the Administrator to enforce an effluent standard or limitation under this chapter the violation of which is occurring in another State and is causing an adverse effect on the public health or welfare in his State, or is causing a violation of any water quality requirement in his State.

STATEMENT OF THE CASE

In 1973, several parties, including the United States, filed suit in the United States District Court for the District of Columbia to rectify an environmental crisis caused by inadequate methods for the disposal of sewage sludge generated by the Blue Plains Sewage Treatment Plant in Washington, D.C.[1] Specifically, Plaintiffs alleged that the Potomac River was being polluted in violation of the federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.*, due to the failure of the several metropolitan jurisdictions which used the Blue Plains Plant to properly dispose of accumulated sewage sludge.

On July 10, 1978, the district court entered an Order in which it found that the accumulation of sewage sludge at Blue Plains created "an emergency affecting the health and safety of the residents of the Washington suburban metropolitan area." The District Court ordered the Washington Suburban Sanitary Commission ("WSSC")[2] to build and to have operational by July 1, 1979 a sewage slude composting facility at a specified site in Montgomery County, Maryland. *United States v. District of*

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[1] *State Water Control Bd. v. WSSC*, Nos. 1813-73, 77-1929 (D.D.C.), *aff'd sub nom. United States v. District of Columbia*, 654 F.2d 802 (D.C. Cir.), *cert. denied*, 454 U.S. 1082 (1981).

[2] Since the Blue Plains plant provided sewage treatment for several metropolitan Washington jurisdictions, including Montgomery and Prince George's Counties, the WSSC as the bi-county commission responsible for the water and sewage service for both counties, was named as a defendant in that suit.

Columbia, et al., 654 F.2d 802, 804-805, *cert. denied,* 454 U.S. 1082 (1981). App. D, 66a-70a.

On April 25, 1980, the district court issued a second Order compelling WSSC to move forward with the construction and operation of the sewage sludge composting facility at the prescribed site now known as "Site II." *Id.*

On June 27, 1980, the district court issued a third Order reiterating the directives set forth in its prior Orders. In this Order, however, the district court summarized the federal court litigation and the political and legal battles between Montgomery and Prince George's Counties in Maryland which had delayed implementation of its prior Orders. In this June 27, 1980 Order, the district court overrode and enjoined WSSC from comp'ying with an injunction issued by the Circuit Court for Preince George's County which prohibited WSSC from expending any funds to build or operate Site II. The district court also ordered WSSC to proceed expeditiously to obtain the land and build and operate the Site II composting project. Finally, the Court enjoined all parties from taking any action which would frustrate or impede the execution of its Order and directed that any nonparty who believed that the Court's Order should be modified for any reasons must intervene in the district court case. *Id.*

Pursuant to the district court's Orders, WSSC obtained title to the specified Site II land and constructed the required sludge composting facility which it placed into operation in December, 1982.

Thereafter, Respondents, neighboring landowners, asserted various claims for money damages against WSSC in the Circuit Court for Montgomery County, Maryland,[3]

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[3] Initially, WSSC sued Respondents for a declaratory judgment that certain covenants which were taken as part of the condemnation of the Site II land were not compensable property rights. Respondents counterclaimed for damages alleging inverse condemnation, breach of covenant, nuisance, bad faith and violation

alleging, in pertinent part, that odors from the operation of the composting facility constituted a nuisance for which WSSC is subject to strict liability without regard to fault under the common law of Maryland. Prior to trial, WSSC moved for summary judgment on the ground that, as a matter of law, it should not be held strictly liable under Maryland's common law of nuisance merely for its good faith and non-negligent execution of the federal court Orders specifically requiring it to build and operate the composting facility at the Site II location.

On July 31, 1990, the state trial court issued an Order ruling that Respondents could not rely on strict liability as the legal standard for their nuisance actions against WSSC. However, the state trial court also concluded that Respondents could proceed with their nuisance claims against WSSC based on a negligence standard. App. C, 60a. Because Respondents failed to present evidence of negligence by WSSC, the circuit court granted WSSC's Motion for Judgment on Respondents' nuisance claims.[4]

Respondents appealed to the Court of Special Appeals of Maryland seeking, *inter alia,* a reversal of the trial court's ruling that due to the federal court orders, negligence, rather than strict liability, was the applicable standard for determining Respondents' nuisance claims. In an Opinion dated March 2, 1992, the Court of Special Appeals of Maryland vacated the trial court judgment in favor of WSSC and remanded for a new trial. *CAE-Link Corp. v. Washington Suburban Sanitary Comm'n,* 90 Md. App. 604, 602 A.2d 239 (1992). App. B, 37a-59a. Specifically, the Court of Special Appeals concluded that the Water Pollution Control Act, under which the United States District Court issued its emergency injunctive Orders, did not pre-empt Maryland's

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of 42 U.S.C. § 1983. Thereafter, WSSC dropped its declaratory judgment action and the case proceeded on Respondents' counterclaims.

[4] The circuit court also concluded that Respondents failed to present sufficient evidence of damage.

standard of strict liability for common law nuisance. Thus, WSSC could be held strictly liable under Maryland nuisance law for carrying out the injunctive Orders of the District Court in good faith and without any negligence.

On April 8, 1993, the Court of Appeals of Maryland issued an Opinion affirming the March 2, 1992 decision of the Court of Special Appeals. *Washington Suburban Sanitary Comm'n v. CAE-Link Corp.*, 330 Md. 115, 622 A.2d 745 (1993). App. A, 1a-36a. That Court reasoned that the citizen suit exception to the Water Pollution Control Act—33 U.S.C. § 1365(e)—overrides its preemptive character as indicated by this Court in *International Paper Co. v. Ouellette*, 479 U.S. 481 (1987). Because the Court of Appeals of Maryland concluded that the emergency powers section of the Water Pollution Control Act did not preempt state law, it ruled that WSSC was subject to strict liability under Maryland nuisance law, despite the fact that it carried out the federal court orders in good faith and without any negligence. 330 Md. at 132-39; 622 A.2d 753-57. App. A, 17a-23a.

REASONS FOR GRANTING WRIT

The Court of Appeals of Maryland has determined that a citizen who has carried out a federal emergency injunctive order in good faith and without negligence is subject to strict liability for damages under state common law solely for complying with those orders. In so doing, the Maryland Court has created a fundamentally unfair dilemma: obey the emergency federal court order and be held strictly liable for the consequences or disobey the federal court order to avoid strict liability under state law, but risk sanctions from the federal court. If this outcome is allowed to stand, state courts could seriously inhibit citizens from complying with federal court orders. Not only is this result violative of the Supremacy Clause and the doctrines of preemption and comity, but it strikes at a fundamental expectation that good faith and non-negligent

compliance with an injunctive order of one court will not result in a finding of liability in another court.

By no means does WSSC seek a shield from liability for its own negligence or recknessness; rather, WSSC merely requests that it not be held strictly liable for obeying emergency orders of a federal court. Regardless of the basis upon which a federal court order rests—be it statutory or equitable—it must be obeyed under the penalty of contempt. *Maness v. Meyer,* 419 U.S. 449, 460 (1975). This Court has repeatedly held that persons subject to an injunctive order are expected to follow it out of respect for the judicial process. *Walker v. City of Birmingham,* 388 U.S. 307, 320-21 (1967); *North Am. Coal Corp. v. Local Union 2262, United Mine Workers,* 497 F.2d 459, 465 (6th Cir. 1974). Implicit in this rule is an understanding that good faith and non-negligent obedience to such judicial decree will provide a shield against liability. Any other construction would be manifestly unjust, forcing persons subject to injunctions to make an unfair Hobson's choice and thereby undermine respect for the judicial process.

The decision of the Court of Appeals of Maryland also sanctions state court intrusion into the exclusive authority of the federal courts to order responses to pollution emergencies. Not only is such intrusion in direct contravention of the emergency powers section of the Water Pollution Control Act, but also this Court's ruling in *International Paper Co. v. Ouellette,* 479 U.S. 481 (1987). If a state court can hold a citizen strictly liable for damages for good faith and non-negligent compliance with federal court orders to rectify a pollution emergency, then the states have assumed coordinate power to oversee management and remediation of such pollution emergencies. However, both the language of the Water Pollution Control Act and common sense dictate that a single legal authority have exclusive emergency power. Such emergency power has been given exclusively to the federal

courts by the Water Polluion Control Act and the state court's encroachment must be rejected.

I. EMERGENCY INJUNCTIVE ORDERS ISSUED BY A UNITED STATES DISTRICT COURT UNDER THE EMERGENCY POWERS SECTION OF THE WATER POLLUTION CONTROL ACT, 33 U.S.C. § 1364, WHICH REQUIRE PETITIONER TO BUILD AND OPERATE A SLUDGE COMPOSTING FACILITY AT A SPECIFIED LOCATION PREEMPT STATE LAW TO THE EXTENT THAT STATE LAW SUBJECTS PETITIONER TO STRICT LIABILITY FOR CARRYING OUT THOSE EMERGENCY INJUNCTIVE ORDERS IN GOOD FAITH AND WITHOUT NEGLIGENCE.

The preemption doctrine, which is rooted in the Supremacy Clause, U.S. Const., Art. VI, cl.2, is a fundamental principle of American jurisprudence that nullifies those state laws that "interfere with, or are contrary to the laws of Congress, made in pursuance to the constitution . . ." *Gibbons v. Ogden*, 22 U.S. (9 Wheat), 1, 211 (1824). The first type of preemption is explicit, when Congress enacts a statute and explains the scope of the state laws it preempts. *Jones v. Rath Packing Co.*, 430 U.S. 519, 525 (1977). Explicit preemption makes "the courts' task . . . an easy one." *English v. General Electric Co.*, 110 S. Ct. 2270, 2275 (1990).

In the absence of explicit preemptory language, Congressional intent to supersede state law is inferred where the scope of federal regulation may be "so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it," or where the Act of Congress may "touch a field in which the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject." *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947); *see also English v. General Electric Co.*, 110 S. Ct. at 2275.

The third type of preemption is generated whenever state and federal law actually conflict. This preemption exists where it is impossible to comply with both laws or where state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *English,* 110 S. Ct. at 2275; *see also Florida Lime & Avocado Growers, Inc. v. Paul,* 373 U.S. 132 (1963). The second and third bases of preemption apply here.

Petitioner in the instant case must overcome a presumption against "seeking out conflicts between state and federal regulations where none clearly exists." *English,* 110 S. Ct. at 2281 (quoting *Huron Cement Co. v. Detroit,* 362 U.S. 440, 446 (1960)), because "[o]rdinarily, state causes of actions are not preempted solely because they impose liability over and above that authorized by federal law." *California v. ARC Am. Corp.,* 109 S. Ct. 1661, 1667 (1989). This presumption is surmounted here by the involuntary nature of WSSC's act: it was compelled to build the composting facility by the emergency orders of a federal district court. It did so in good faith and without negligence and its liability under state law is predicated solely on its compliance with the emergency orders.

This Court has held that under the doctrine of implied preemption a state cannot regulate conduct or activities which are authorized by a federal regulatory scheme. *Chicago & N.W. Transp. Co. v. Kalo Brick & Tile Co.,* 450 U.S. 311, 318 (1981). By the same logic, when a party acts without negligence under explicit compulsion of an emergency injunctive court order issued by a federal court pursuant to authority of a federal statute, a state should not be permitted to impose strict liability under its common law. Not only does imposition of strict liabiilty under state law impose an unfair burden on WSSC, but it also places a stamp of federal acquiescence on state court intrusion into federal manage-

ment and response to environmental emergencies under the Water Pollution Control Act.

Section 1364(a) of the Water Pollution Control Act expressly addresses the broad emergency powers of the federal district courts to act upon evidence of pollution ". . . presenting an imminent and substantial endangerment to the health of persons or to the welfare of persons . . ." and issue restraining orders or ". . . to take such other action as may be necessary." 33 U.S.C. § 1364(a). Both logic and common sense dictate that judicial orders issued under emergency conditions must preempt state law or regulation. In the face of a pollution emergency, time for the niceties of joint federal-state coordination and accommodation to state and local laws is not usually possible. Proper response to such emergencies requires immediate attention and, as a practical matter, demands a single authoritative command which, of necessity, must preempt all other authority. Since Congress has expressly vested this emergency power in the district courts, state law is clearly preempted.

Although the imposition of strict liability under state common law does not specifically prohibit or obstruct WSSC from physically building or operating the composting facility as required by the district court orders, it does make WSSC's good faith and non-negligent execution of the federal orders wrongful under state common law and also subjects WSSC to monetary damages for such "tortious" conduct. Indeed, this Court has recognized that the imposition of money damages under state tort law is a form of state regulation subject to the Supremacy Clause. In *San Diego Bldg. Trades Council v. Garmon,* 359 U.S. 236 (1959), this Court spoke directly to this issue:

> Our concern is with delimiting areas of conduct which must be free from state regulation if national policy is to be left unhampered. Such regulation can be as effectively exerted through an award of damages as through some form of preventive relief. *The*

> *obligation to pay compensation* can be, indeed *is designed to be, a potent method of governing conduct and controlling policy. Even the States' salutary effort to redress private wrongs or grant compensation for past harm cannot be exerted to regulate activities that are potentially subject to the exclusive federal regulatory scheme.*

359 U.S. at 246-47 (emphasis supplied); *see CSX Transportation, Inc. v. Easterwood*, 113 S. Ct. 1732, 1737 (1993); *Cipollone v. Liggett Group, Inc.*, 112 S. Ct. 2608, 2620 (1992). This Court further reasoned that:

> It may be that an award of damages in a particular situation will not, in fact, conflict with active assertion of federal authority. The same may be true of the incidence of a particular state injunction. To sanction either involves a conflict with federal policy in that it involves allowing two law-making sources to govern.

359 U.S. at 247; *see Wisconsin Dep't of Indus. v. Gould, Inc.*, 475 U.S. 282, 286 (1986). And, in *Chicago & N.W. Transp. Co. v. Kalo Brick & Tile Co.*, 450 U.S. 311 (1981), this Court emphasized that a state cannot use the threat of damages to control or regulate conduct which is governed by a scheme of federal regulation. "It would vitiate the overarching Congressional intent of creating 'an efficient and nationally integrated railroad system' . . . to permit the State of Iowa to use the threat of damages to require a carrier to do exactly what the Commission is empowered to excuse." 450 U.S. at 325-26.

Applying *San Diego Bldg. Trades Council v. Garmon*, it is plain that the State of Maryand is regulating, through the application of strict liability and the threat of state court damages, WSSC's conduct which, in turn, is not merely authorized, but affirmatively mandated by emergency injunctive orders of a federal court. For better or worse the federal court orders obligated WSSC to build and operate a specified sludge composting facility at a

specified location and WSSC properly executed these orders. Indeed, the state court's imposition of strict liability and the threat of repeated damages cannot be brushed aside as merely an extra cost to the implementation of the federal court orders. *See Washington Suburban Sanitary Comm'n v. CAE-Link Corp.*, 330 Md. at 139, 622 A.2d at 757. The state court's imposition of strict liability is an improper intrusion of state law into the federal resolution of an environmental emergency in the context of ". . . an all-encompassing program of water pollution regulation." *International Paper Co.*, 479 U.S. at 492-93. State common law must be preempted to the extent that it permits application of strict liability for good faith and non-negligent compliance with emergency federal court orders.

II. THE CITIZEN SUIT PROVISION OF THE WATER POLLUTION CONTROL ACT, 33 U.S.C. § 1365, DOES NOT PRESERVE STATE COMMON LAW ACTIONS SO AS TO PRECLUDE PREEMPTION OF STATE LAW BY OTHER PROVISIONS OF THE WATER POLLUTION CONTROL ACT, AND EMERGENCY FEDERAL COURT ORDERS ISSUED UNDER THE EMERGENCY POWERS SECTION OF THE ACT, 33 U.S.C. § 1364, PREEMPT CONFLICTING STATE LAW, AS INDICATED BY THIS COURT IN *INTERNATIONAL PAPER COMPANY v. OUELLETTE*, 479 U.S. 481 (1987).

The Maryland Court of Appeals misreads *International Paper Co. v. Ouellette*, 479 U.S. 481 (1987), to mean that the citizen suit section of the Water Pollution Control Act broadly preserves a private right of action under state common law. Specifically, the Maryland court incorrectly concludes that the "savings clause," 33 U.S.C. § 1365(e), applies to the entire Water Pollution Control

Act and, therefore, the Act does not preempt state common law actions.[5]

The district court orders were issued under the emergency powers section, 33 U.S.C. § 1364, not under the § 1365 citizen suit provision. Under *Ouellette*, the "savings clause" does not apply to Section 1364 and the Maryland common law of nuisance founded upon strict liability is preempted. This Court's language in *Ouellette* is clear and totally at odds with the interpretation by the Court of Appeals of Maryland. *Ouellette* says:

> Section 505(e) [the savings clause] merely says that "[n]othing *in this section*," i.e., the citizen-suit provisions, shall affect an injured party's right to seek relief under state law; it does not purport to preclude preemption of state law by other provisions of the Act.

479 U.S. 493 (emphasis in original).

The emergency powers section authorizes a suit to be brought on behalf of the United States "[n]otwithstanding any other provision of this Act . . . in the appropriate district court to immediately restrain any person causing or contributing to the alleged pollution to stop the discharge of pollutants . . . or to take such other action as may be necessary." 33 U.S.C. § 1364. While the emergency orders of the district court do not cite § 1364 by

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[5] The Court of Appeals of Maryland specifically holds:

> *Ouellette* simply does not stand for the proposition that all actions under the Clean Water Act, except the citizens' suit section· preempt state law. WSSC reads the savings clause much too narrowly. To the extent that the action does not otherwise thwart the goal of the Clean Water Act [Water Pollution Control Act], the savings clause does preserve state law remedies. Notwithstanding its inclusion within § 1365, the effect of the savings clause is not limited to that section; it is, rather, a recognition that, in addition to actions under the Clean Water Act, persons injured by pollution may seek additional remedies.

330 Md. at 137, 622 A.2d at 756.

name, they were issued upon a complaint by the United States and upon a very specific finding by the district court of an " 'emergency affecting the health and safety of the residents of the Washington metropolitan area.' " *See WSSC v. CAE-Link Corp.*, 330 Md. at 134 n.10, 622 A.2d at 754, n10. Moreover, the orders sought to prevent violation of the Water Pollution Control Act. In any event, the opinion of the Court of Appeals of Maryland assumes that the district court orders were issued pursuant to § 1364. 330 Md. at 134, 622 A.2d at 755.

The outcome is clear when the plain statutory language of § 1364 is combined with the rule that state laws which interfere with the " 'full purposes and objectives of Congress' " are preempted. *Quellette* at 493-94 (quoting *Hillsborough County v. Automated Medical Lab., Inc.*, 471 U.S. 707, 713 (1985). Recognizing a broad federal interest in the field of environmental regulation, federal courts have used their power to ensure state compliance with federal environmental laws. *See United States v. City of Detroit*, 476 F. Supp. 512 (E.D. Mich. 1979); *Cf. Washington v. Washington State Commercial Passenger Vessel Ass'n*, 443 U.S. 658, 696 (1979).

In the present case, the result of the district court's emergency orders can be criticized in hindsight as solving a water pollution problem in metropolitan Washington by creating an alleged odor problem in Maryland. But, it is clear that Congress never intended that preemption of state law depends upon the ultimate success or failure of emergency remedial measures ordered by a district court. In fact, the language of § 1364 evidences a legislative intent to give the district courts broad discretion to take whatever action may be necessary to resolve a pollution emergency. Moreover, nothing in the "savings clause" of § 1365 suggests preservation of state law remedies as a vehicle to challenge or seek damages for non-negligent implementation of emergency court orders under § 1364. At the same time, Congress clearly intended that

the federal district courts serve as the exclusive judicial authority in connection with pollution emergencies under 33 U.S.C. § 1364. There is no basis for state court encroachment on this exclusive authority.

CONCLUSION

For these reasons, the Washington Suburban Sanitary Commission respectfully requests that this Petition be granted.

Respectfully submitted,

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